

## **EXHIBIT B**

## **Viceroy Research**

At the peak of tulip mania, in March 1637, some single tulip bulbs sold for more than 10 times the annual income of a skilled craftsman.

# **MiMedx's (NASDAQ:MDXG) employment of kickback & bribery scheme inducers makes it uninvestable.**

Viceroy Research uncovered substantial previously-unreported data evidencing an incestuous hiring policy from a kickback & bribery scheme, a possible SEC enforcement investigation, and indications of channel stuffing.

- Sean McCormack – MiMedx's “New Market Initiatives Director” – was an instrumental figure in Advanced BioHealing's kickback and bribery inducement scheme, which resulted in the largest settlement of a False Claims Act breach to date: \$350m settlement, and a \$600m+ write-down by Shire. At least 54 Advanced BioHealing alumnus have been identified by Viceroy within MiMedx's sales force including at least 15 in senior employment positions.
- A FOIA request was withheld by the Securities and Exchange Commission (SEC) suggesting MiMedx is the target of an undisclosed SEC enforcement investigation.
- Former employees-turned whistleblowers accused MiMedx of aggressive channel-stuffing practices and improper revenue recognition policies. Their statement named many ex-Advanced BioHealing employees. Despite the fact these allegations having been withdrawn, Viceroy's analysis found evidence supporting these claims in MiMedx's financial accounts – there's no smoke without fire.
- MiMedx's SAM compliance certification was filled out by Don Ayers, who was no longer employed by MiMedx at the time the forms were signed.

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## MiMedx's employment of kickback & bribery scheme inducers makes it uninvestable

Viceroy Research uncovered substantial previously-unreported data evidencing an incestuous hiring policy from a kickback & bribery scheme, a possible SEC enforcement investigation, and indications of channel stuffing.

MiMedx (NASDAQ:MDXG) is a manufacturer and sales organization primarily engaged in the sale of allografts. While the outward picture is one of a strong central business and sales organization the truth is far from it.

- **Sean McCormack<sup>1</sup> - MiMedx's "New Market Initiatives Director" – was an instrumental figure in Advanced BioHealing's kickback and bribery inducement scheme<sup>2</sup>**, which resulted in the **largest settlement of a False Claims Act breach to date: \$350m settlement<sup>3</sup>**, and a \$600m+ write-down by Shire. At least 54 Advanced BioHealing alumnus have been identified by Viceroy within MiMedx's sales force including at least 15 in senior employment positions.
- **Viceroy has discovered that SAM.gov (System for Award Management) compliance requires disclosures relating to bribery and other criminal activities or conduct by certificate holders.** Viceroy has serious reservations as to whether MiMedx properly disclosed its employees' connections with the Advanced BioHealing/Shire kickback and bribery inducement scheme.
- **MiMedx's SAM compliance certification was filled out by Don Ayers<sup>4</sup>, who was no longer employed by MiMedx at the time the forms were signed.**
- **A FOIA request was withheld by the Securities and Exchange Commission (SEC) suggesting MiMedx is the target of an undisclosed SEC enforcement investigation.**
- **Former employees-turned whistleblowers accused MiMedx of aggressive channel-stuffing practices and improper revenue recognition policies.** Their statement named many ex-Advanced BioHealing employees. Despite the fact these allegations having been withdrawn, Viceroy's analysis found evidence supporting these claims in MiMedx's financial accounts - there's no smoke without fire.
- **Viceroy finds the MiMedx-AvKare supplier-distributor relationship extremely suspicious.** A 2014 AvKare invoice contained a MiMedx fax number and was signed by a MiMedx employee. **MiMedx did not have certification to sell to government agencies at the time.**
- **MiMedx's pricing policy suggests an attempt to conceal or draw attention away from purchase orders<sup>5</sup>**, specifically a 1 cent difference between AvKare and MiMedx pricing. Viceroy is planning to consult with the Department of Veterans Affairs on this policy.
- **Viceroy's analysis of MiMedx's acquisition and divestment of Stability Biologics demonstrates the pinnacle of managerial incompetency and financial illiteracy.**

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*Viceroy's comprehensive investigation into MiMedx has revealed an organization with serious issues in senior management, acquisitions, operations, and accounts which we believe makes the company uninvestable.*

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In light of the evidence we have gathered, Viceroy believes MiMedx is at serious risk of losing government supply certifications and the sales privileges therein which comprise a substantial portion of revenues.

**If allegations are true, Viceroy believes MiMedx is valued at \$0.**

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<sup>1</sup> <https://www.linkedin.com/in/seanmccormack904/>

<sup>2</sup> Advanced BioHealing Case Complaint 8-11-cv-00176-JSM-MAP

<sup>3</sup> <https://www.justice.gov/opa/pr/shire-plc-subsidiaries-pay-350-million-settle-false-claims-act-allegations>

<sup>4</sup> <https://www.linkedin.com/in/don-ayers-a3a942a/>

<sup>5</sup> <https://www.va.gov/hac/Search/Details/V797P-4076b>

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## Summary

MiMedx is a manufacturer and sales organization primarily engaged in the sale of allografts.

MiMedx has systematically recruited sales staff from now-defunct Advanced BioHealing, a former subsidiary of Shire Pharmaceuticals. Advanced BioHealing operated a kickback and bribery sales inducement scheme which resulted in the largest settlement of a False Claims Act to date of \$350m, and a \$600m write down by Shire when it was later sold.

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*MiMedx whistleblowers have made allegations over the last few years suggesting MiMedx's sales scheme is not dissimilar to that of Advanced BioHealing.*

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At least 54 Advanced BioHealing alumnus have been identified by Viceroy within MiMedx's sales force, including at least 15 in senior employment positions. None of these employees, despite their seniority, appear on public MiMedx documents.

Perhaps the most concerning hire Viceroy identified was Sean McCormack – MiMedx's “New Market Initiatives Director” – who has been named in Advanced BioHealing court documents as an instrumental figure in the kickback and bribery inducement scheme, including as one of the sales staff trainers.

Prior to his tenure at Advanced BioHealing, McCormack was a Regional Sales Manager at Biolase. Biolase was also accused of channel-stuffing during McCormack's tenure – setting a general theme which we believe MiMedx has not broken away from.

A number of former employees-turned **whistleblowers have accused MiMedx of aggressive channel-stuffing practices and improper revenue recognition policies**. Their statement named many ex-Advanced BioHealing employees. Despite the fact these allegations having been withdrawn, Viceroy's analysis found evidence supporting these claims in MiMedx's financial accounts.

Growth in Selling General & Administrative (SG&A) expenses, which are attributed to increases in sales staff, do not correlate with specified increases in headcount and channel checked wages by a factor of two. Allegations made by Advanced BioHealing employees suggest that a substantial portion of SG&A growth is attributable to kickbacks and ‘sales incentives’ given to VA doctors and medical supply procurement officers.

MiMedx is dependent on System for Award Management (SAM) certification in order to be able to sell to government agencies including VA hospitals. SAM compliance requires disclosures relating to bribery and other criminal activities or conduct by certificate holders.

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*Viceroy have serious reservations as to whether MiMedx should have disclosed its employees' connections with the Advanced BioHealing/Shire kickback and bribery inducement scheme.*

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MiMedx's SAM compliance certification was filled out by Don Ayers<sup>6</sup>, who was no longer employed by MiMedx at the time the forms were signed. Don Ayers signed the form with confirmation that the company or its principals (which in definition includes managerial / supervisory roles) have not been involved in federal violations, such as a kickback and bribery scheme.

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<sup>6</sup> <https://www.linkedin.com/in/don-ayers-a3a942a/>

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*We believe MiMedx shareholders should immediately demand an independent investigation into MiMedx's hiring practices and SAM compliance. Viceroy believes MiMedx are at serious risk of losing their SAM certification.*

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Viceroy and our associates submitted FOIA requests to a number of government departments during the course of our due diligence process.

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*A FOIA request made by Viceroy regarding MiMedx was withheld under 5 U.S. Code § 552 (b)(7)(A); legislation suggests MiMedx is the subject of SEC investigation and enforcement process.*

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Viceroy find the MiMedx-AvKare supplier-distributor relationship extremely suspicious. A 2014 AvKare invoice obtained by Viceroy contained a MiMedx fax number and was signed by a MiMedx employee, suggesting MiMedx was procuring and soliciting sales on behalf of its distributor. **MiMedx did not have certification to sell to government agencies at the time.**

**MiMedx's pricing policy suggests an attempt to conceal or draw attention away from purchase orders**<sup>7</sup>, specifically a 1 cent difference between AvKare and MiMedx pricing. Viceroy believe this pricing difference is a method to bypass manual internal control checks at VA hospitals. Viceroy is planning to consult with the Department of Veterans Affairs on this.

Stability Biologics, which was acquired by MiMedx is a human tissue products provider to the healthcare industry closely aligned with MiMedx's business model. Ironically, it appears that Stability biologics was itself channel-stuffing, as a \$10m payment for the Stability biologics business drew a \$3.4m offset due to returned and/or expired stock.

MiMedx sold Stability back to its founder for only \$3.5m in promissory notes and offsets against all earn-out fees (which Viceroy assumes were massive), for which MiMedx would indemnify Stability's stockholders of allegations of material misrepresentations.

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*The Stability Biologics deal represents the pinnacle of managerial incompetency and financial illiteracy. Viceroy believes red flags such as this make MiMedx uninvestable.*

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An auditor discovery of a material internal control weaknesses at the end of 2016 adds to MiMedx's track record of poor due diligence. More than six months later, **the material weakness had yet to be corrected and MiMedx subsequently replaced their long-standing auditors.**

**Given the seriousness nature of allegations and systematic reports of federal violations**, MiMedx are at serious risk of losing their ability to sell to government agencies on the back of significant compliance misrepresentations. We believe MiMedx is uninvestable and entirely unethical in its business practices. Direct business with Veterans Affairs is estimated by brokers to be ~25% of MiMedx's revenue in 2016, and we anticipate the VA will take action against MiMedx in light of the facts in this report

**Viceroy have submitted a whistleblower dossier with the SEC** and will continue to make numerous enquiries relating to MiMedx to Veterans Affairs and other government authorities on the back of this research.

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<sup>7</sup> <https://www.va.gov/nac/Search/Details/V797P-4076b>

## 1. Sean McCormack: the \$350 million-dollar man

Sean McCormack is **Director of New Market Initiatives at MiMedx**. Previously, McCormack was the National Sales Director at Advanced BioHealing<sup>8</sup> - one of many former Advanced BioHealing employees alleged to have made false or fraudulent claims for its Dermagraft™ product and related services to Medicare, Medicaid and TRICARE programs from at least July 2008 to January 2011.



Figure 1 Extract of Sean McCormack's LinkedIn profile<sup>9</sup>

Given McCormack's history, Viceroy believes it is highly irresponsible of MiMedx to employ Sean McCormack, let alone in a position of power and influence.

### The Advanced BioHealing scheme

McCormack's LinkedIn profile shows his employment at Advanced BioHealing (under the name Shire Regenerative Medicine) began in 2007.

McCormack and Advanced BioHealing's management were accused of directing "...a pervasive scheme to provide numerous types of illegal remuneration to physicians and their office staff..."

17. Advanced Biohealing management directs a pervasive scheme to provide numerous types of illegal remuneration to physicians and their office staff in return for (1) those physicians purchasing Dermagraft to use on Medicare patients in the treatment of diabetic foot ulcers, and (2) physician office staff providing Advanced Biohealing with patients' protected health information so that Advanced Biohealing can perform insurance verifications to determine how much Medicare would pay for Dermagraft on specific patients.

Figure 2 Advanced BioHealing Case Complaint 8-11-cv-00176-JSM-MAPs

*Evidence was such that Advanced BioHealing's parent company Shire Pharmaceuticals LLC settled the largest False Claims Act recovery case ever for \$350 million dollars.*

<sup>8</sup> Advanced BioHealing Case Complaint 8-11-cv-00176-JSM-MAP

<sup>9</sup> <https://www.linkedin.com/in/seanmccormack904/>

**Shire PLC Subsidiaries to Pay \$350 Million to Settle False Claims Act Allegations**

The Justice Department announced today that Shire Pharmaceuticals LLC and other subsidiaries of Shire plc (Shire) will pay \$350 million to settle federal and state False Claims Act allegations that Shire and the company it acquired in 2011, Advanced BioHealing (ABH), employed kickbacks and other unlawful methods to induce clinics and physicians to use or overuse its product "Dermagraft," a bioengineered human skin substitute approved by the FDA for the treatment of diabetic foot ulcers. Shire plc is a multinational pharmaceutical firm headquartered in Ireland, with its United States operational headquarters in Lexington, Massachusetts. Shire sold the assets associated with Dermagraft in early 2014.

"This settlement represents the largest False Claims Act recovery by the United States in a kickback case involving a medical device," said Principal Deputy Assistant Attorney General Benjamin C. Mizer, head of the Justice Department's Civil Division. "Kickbacks by suppliers of healthcare goods and services cast a pall over the integrity of our health care system. Patients deserve the unfettered, independent judgment of their health care professionals."

Figure 3 Shire PLC Subsidiaries to Pay \$350 Million to Settle False Claims Act Allegations<sup>10</sup>

After investigating Advanced BioHealing and the claims of former employees, Sean McCormack's involvement stood out as a key influence to the kickback and bribery scheme. He was specifically named as directing the illegal inducements to improve sales usually through bribery and kickbacks per Figure 4 below:

**19. Many of these inducements were directed by National Sales Director Sean**

**McCormack. Others were directed by Regional Manager Pete Goodwyn.**

Figure 4 Advanced BioHealing Case Complaint 8-11-cv-00176-JSM-MAP<sup>11</sup>

The charges against Advanced BioHealing were numerous: **inducements provided by Advanced BioHealing to physicians included**<sup>12</sup>:

**18. These various types of inducements provided by Advanced Biohealing to physicians include:**

- A. Providing free medical supplies to physicians;**
- B. Providing tickets to sports games and Cirque de Soleil performances to physicians;**
- C. Providing free weekends at expensive resort locations to physicians;**
- D. Providing free scrubs to physicians;**
- E. Providing cameras to physicians to use to take photos of patient wounds for use in case studies for which physicians could be paid by Advanced Biohealing;**
- F. Providing free mailers and postage to promote physician practices;**
- G. Providing liquor to physicians and their office staff;**
- H. Providing edible fruit arrangements to physicians and their office staff;**
- I. Providing gas cards to physicians and their office staff;**
- J. Providing Starbucks, Bonefish Grill, Applebees, 7-11 and other restaurant gift cards to physicians and their office staff;**
- K. Providing American Express, Visa and Blockbuster gift cards to physicians and their office staff;**
- L. Providing physicians with free insurance verification forms indicating the reimbursement available to physicians for application of Dermagraft to specific patients to encourage and motivate physicians to apply Dermagraft;**

Figure 5 Advanced BioHealing Case Complaint 8-11-cv-00176-JSM-MAP – pt. 1

<sup>10</sup> <https://www.justice.gov/opa/pr/shire-plc-subsidiaries-pay-350-million-settle-false-claims-act-allegations>

<sup>11</sup> Advanced BioHealing Case Complaint 8-11-cv-00176-JSM-MAP Available on PACER

<sup>12</sup> See footnote 10

- M. Providing a guarantee to physicians that they will not have to pay Advanced Biohealing for the full price of Dermagraft purchased if a patient's insurer does not reimburse the physician at the amount predicted by Advanced Biohealing;
- N. Providing physicians "scrap credits" or rebates for unused pieces of Dermagraft;
- O. Providing physicians with ghost-written letters of medical necessity;
- P. Providing physicians with draft dictation language and progress notes to be included in patient charts to justify using Dermagraft;
- Q. Providing physicians with free business development kits; and
- R. Providing physicians with free "case studies" which physicians use in marketing to referring physicians, home health agencies and assisted living facilities.

Figure 6 Advanced BioHealing Case Complaint 8-11-cv-00176-JSM-MAP – pt. 2

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*As a reminder to investors the False Claims Act complaint states: **many of these inducements were directed by National Sales Director Sean McCormack. Others were directed by Regional Manager Pete Goodwyn**<sup>13</sup>.*

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One Advanced BioHealing executive, Todd Clawson, was later convicted for bribery of government officials and working together with co-conspirators to create algorithms to direct VA podiatrists and clinicians to use Dermagraft™ to boost sales<sup>14</sup>.

Sean McCormack stood accused of behavior that resulted in a \$350m settlement and a \$650m write-off for Shire Pharmaceuticals. While the case was settled and implies no admission of guilt we question why MiMedx has not disclosed his employment to investors.

Perhaps most concerning is that Sean McCormack appears to have been responsible for training sales staff committing these offenses:

**ABH's Remuneration-Based "Marketing" Program**

- 56. Harvey worked for ABH for just over one year. During that time, he witnessed rampant use of remuneration by ABH sales representatives.
- 57. Upon joining the Company, he attended a training conducted by Keith O'Briant, Tony Ezell, and Sean McCormack.
- 58. At that time, O'Briant was the Vice President of Sales; now, he is ABH's Senior Vice President of North American Sales.
- 59. Ezell is the Western Regional Sales Director and McCormack is the Eastern Regional Sales Director.

Figure 7 Extract from Case 1:11-cv-00898-KBJ – COMPLAINT - Plaintiff/Relater Mark J. Harvey

Despite his alleged role in the scheme, McCormack's LinkedIn seems to boast about his skills as a manager, executive and salesperson at Advanced BioHealing.

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<sup>13</sup> Advanced BioHealing Case Complaint 8-11-cv-00176-JSM-MAP Available on PACER

<sup>14</sup> <http://www.fiercebiotech.com/medical-devices/ex-med-tech-ceo-faces-jail-time-for-bribing-docs-to-promote-skinlike-wound-dressing>

- Changed standard of care, driving dramatic sales increases leading to acquisition. Recognized that the standard of care for the treatment of diabetic foot ulcers had not changed since 1999. Undertook extensive literature review, crafted message about how the standard of care had changed. Incorporated supporting literature with the assistance of key opinion leaders into a sales and marketing campaign entitled "Driving the Standard of Care." Brought a group of global thought leaders and experts together to publish "The Consensus Recommendations on Advancing the Standard of Care for Treating Neuropathic Foot Ulcers in Patients with Diabetes" which ABH's technology was positioned as part of the new standard of care. Increased sales from \$44M to \$200M leading to ABH's acquisition for \$750M by Shire.
- Penetrated key referral markets. Focused on home health and dialysis markets to create an extensive referral network where more patients would be exposed to ABH's advanced technology. Chose five high priority geographies to pilot new business model. Hired five seasoned business development specialists. Created partnerships with 22 advanced wound care treatment centers. Increased product revenue by 156%.

Figure 8 Extract of Sean McCormack's LinkedIn profile<sup>15</sup>

McCormack's claims seem somewhat flat given that these activities led to massive losses by both Advanced BioHealing and Shire Pharmaceuticals. He claims to have increased sales and product revenue, going so far as to say that these actions "[led] to ABH's acquisition for \$750M by Shire." In addition to his, he "penetrated key referral markets...created partnerships".

He fails to mention that Advanced BioHealing settled \$350m for a False Claims Act violation caused by a scheme he is alleged to have directed. He fails to mention that Shire took a +\$600m write down on their purchase. He fails to mention that his attempts at "[penetrating] key referral markets" allegedly included bribery and kickbacks. He fails to mention that Advanced BioHealing allegedly "[created] partnerships with...advanced wound care centers" with gifts, inducements and enormous speaking fees.

In light of this, we feel that McCormack's boasts may be a little selective in their disclosure.

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<sup>15</sup> <https://www.linkedin.com/in/seanmccormack904/>

McCormack joins MiMedx

Despite being named as a key influencer of Advanced BioHealing's kickback and bribery scheme which resulted in the largest False Claims Act Settlement, **Sean McCormack is now Director of New Market Initiatives at MiMedx**<sup>16</sup>:



Figure 9 Sean McCormack LinkedIn – September 15, 2017<sup>17</sup>

*Despite McCormack's seniority he appears in NO MiMedx materials or websites and does not appear to have a regular format MiMedx email address.*

We believe McCormack's position at the company and past are a fact MiMedx would like to keep to themselves. Do not take our word for it, try Google™: <http://imgtify.com/?q=Sean+McCormack+joins+Mimedx>

High Sales, General and Administration costs

In light of the above, we find it concerning that MiMedx's largest cost by far is its Selling, General and Administrative (SG&A) expenses which consists of:

including government affairs and other support areas as well as the addition of Stability Biologics personnel and associated costs. Selling, General and Administrative expenses consist of personnel costs, professional fees, sales commissions, sales training costs, industry trade show fees and expenses, product promotions and product literature costs, facilities costs and other sales, marketing and administrative costs, depreciation and amortization, and share-based compensation. Share-based compensation included in Selling, General and

Figure 10 SG&A components<sup>18</sup>

Figure 11 below shows SG&A expenses as a percentage of sales for MiMedx and Integra Lifesciences.

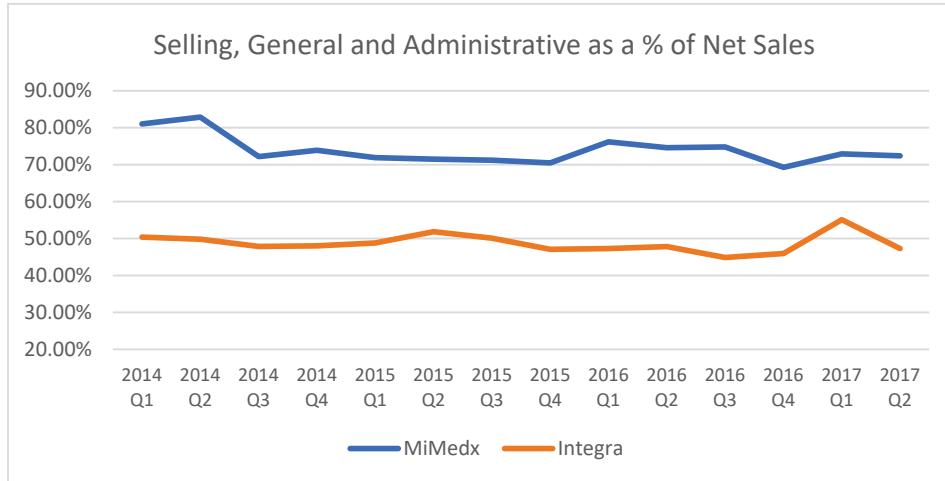


Figure 11 Selling, General & Administrative as a % of Net Sales

<sup>16</sup> <https://www.linkedin.com/in/seanmccormack904/>

<sup>17</sup> See footnote 15

<sup>18</sup> FY 2016 financial statements – pg. 42

MiMedx's SG&A expenses as a percentage of Sales is consistently around 20 percentage points above competitors.

Last financial year MiMedx saw a \$46.6m (35%) increase in SG&A expenses to \$180m. MiMedx attributes the majority of these costs to the addition of personnel. MiMedx increased its headcount by 140 individuals through 2016<sup>19</sup>.

volume. General and administrative expense increases were driven primarily by costs associated with adding personnel to support continued growth including government affairs and other support areas as well as the addition of Stability Biologics personnel and associated costs. Selling, General and

Figure 12 SG&A costs per employee<sup>20</sup>

This suggests that after share-based compensation, amortization, acquisition costs, rent costs and one-time acquisition costs, MiMedx spent **\$306,928** per new staff member on wages. Glassdoor data on MiMedx shows Sales Executives (who are on the higher end of the income range) were paid **\$147,000-\$162,000** including bonuses.

Breakdown of SG&A increase 2015-2016 <sup>21</sup>	(\$)
<b>Increase in SG&amp;A expenses YoY</b>	<b>46.60m</b>
Less: Increase in share based compensation	0.90m
Less: Increase in amortization	1.20m
Less: One-time acquisition related costs	1.08m
Less: Increase in rent	0.45m
<b>Net Increase presumably attributable to new staff</b>	<b>42.97m</b>
Increase in headcount	140
<b>SG&amp;A expense per new employee</b>	<b>\$306,928</b>

Figure 13 SG&A costs per employee

Even if we assume this high-end income across all MiMedx's new hires, we question where the remaining ~\$145,000 per new staff member went.

<sup>19</sup> FY 2016 financial statements – pg. 16 & FY 2015 financial statements – pg. 15

<sup>20</sup> FY 2016 financial statements – pg. 42

<sup>21</sup> FY 2016 financial statements – pg. 41, 42 & 74

Perhaps coincidentally, Sean McCormack and other Advanced BioHealing sales management staff's role at Advanced BioHealing allegedly included directing employees to spend excessive amounts on gifts, holidays and novelty items on clients. We cannot envision a satisfactory alternative (including marketing costs, for example) which would explain such a large discrepancy:

72. Assuming that each sales representative followed O'Briant's instructions and, like Harvey, spent between \$4,500 and \$7,000 per month on gifts and other remuneration, between \$189,000 and \$294,000 was given to VA employees by ABH during that time period.

73. From approximately July of 2009 until November of 2009, the number of ABH sales representative increased to 11. Applying the assumptions discussed above, between \$198,000 and \$308,000 was given to VA employees by ABH during those four months.

Figure 14 Extract from Case 1:11-cv-00898-KBJ – COMPLAINT - Plaintiff/Relater Mark J. Harvey, for his complaint against Defendant Advanced BioHealing, Inc.<sup>22</sup>

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*This financial analysis increases conviction in Viceroy's belief that MiMedx is using extreme, unsustainable, and unethical practices to boost its sales numbers.*

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#### Key takeaways

**Our findings on Sean McCormack alone show a historic pattern of behavior that has proven costly to the businesses he has been employed in, both in monetary terms and public perception.** We believe the VA will not look upon McCormack's involvement with MiMedx favorably, and that action will be taken against them. Given the sizable share of MiMedx's revenue comes from the VA, we believe this mistake will cost them dearly.

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*Why is a man accused of directing illegal inducements by the Department of Justice which led to the largest false claims settlement currently Director of New Market Initiatives at MiMedx? Are investors not in the slightest concerned? Or are they unaware?*

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<sup>22</sup> Case 1:11-cv-00898-KBJ – COMPLAINT - Plaintiff/Relater Mark J. Harvey, for his complaint against Defendant Advanced BioHealing, Inc.,

## 2. Don Ayers and the FARS & DFARS report

Don Ayers was MiMedx's former National Director of Strategic Accounts, a role which he began in February 2013. **Since leaving MiMedx in January 2017**, Ayers is now the Vice President of Market Access at Next Science a company primarily concerned with the research and manufacture of bacterial biofilm solutions<sup>23</sup> which he disclosed started in March 2017. Note his previous roles at Advanced BioHealing and Shire:

	<b>VP Market Access</b> Next Science Mar 2017 – Present • 7 mos Jacksonville, Florida Area
Next Science™ pioneers innovative, proprietary technologies to address the problem of bacterial biofilms. With proven, experienced management and scientific leadership, Next Science and its partners deliver break-through solutions that see beyond the current limits imposed by powerful bacterial colonies.	
	<b>National Director, Strategic Accounts</b> MiMedx Feb 2013 – Jan 2017 • 4 yrs
	<b>National Account Director</b> Shire Jun 2011 – Jan 2013 • 1 yr 8 mos La Jolla, CA
	<b>Director of National Accounts</b> Advanced BioHealing, Inc. Jan 2008 – Jun 2011 • 3 yrs 6 mos
	<b>Western US Sales Director</b> Advanced BioHealing, Inc. Nov 2006 – Jan 2008 • 1 yr 3 mos

Figure 15 Don Ayers LinkedIn – September 15, 2017<sup>24</sup>

“Ghost” signatures and simultaneous employment with Next Science

For context, a Federal Acquisition Regulation & Defense Federal Acquisition Regulation (FAR & DFARS) form is an annual requirement for contractors containing information pertinent to their contracts with the US government.

<sup>23</sup> <https://www.nextscience.com/about-next-science/>

<sup>24</sup> <https://www.linkedin.com/in/don-ayers-a3a942a/>

Given Ayers' January 2017 departure from MiMedx how did Ayers e-sign a FAR & DFARS certification report on MiMedx's behalf on dated March 27<sup>th</sup>, 2017?

<b>FAR &amp; DFARS Report</b>	
<b>Certification for: MiMedx Group, Inc.</b>	
DUNS: 876485496	
<b>Certification Validity From: Mon Mar 27 12:13:59 EDT 2017</b>	
<b>To :Tue Mar 27 12:13:59 EDT 2018</b>	
<p>Donald Ayers had left MiMedx according to his LinkedIn in January 2017 - how is he still there?</p> <p>I have read each of the FAR and DFARS provisions presented below. By submitting this certification, I, Donald Ayers, am attesting to the accuracy of the representations and certifications contained herein, including the entire NAICS table. I understand that I may be subject to penalties if I misrepresent MiMedx Group, Inc. in any of the below representations or certifications to the Government.</p>	

Figure 16 MiMedx FAR & DFARS Report signed by Don Ayers

If Ayers was indeed not employed at MiMedx during this time then we question Ayers' assertion of the accuracy of the contents of the certification report<sup>25</sup>.

Simultaneous employment at Next Science while employed at MiMedx

Even stranger is that Ayers is listed as the Vice President of Market Access at Next Science in Next Science releases dating as far back as 2015, almost 2 years before he left MiMedx, **while simultaneously being employed at MiMedx**<sup>26</sup>.

<b>Inquiries:</b>
<b>Don Ayers</b>
Vice President, Market Access
855-564-2762
<a href="mailto:sales@nextscience.com">sales@nextscience.com</a>

Figure 17 Don Ayers' contact details on Next Science press release dated 9/1/15<sup>27</sup>

This is clearly a gross violation of the non-compete agreement MiMedx has so aggressively enforced against three employees involved in the whistleblower case against them.

As evidenced in the sections 5 and 6 of our report Viceroy believes that MiMedx's non-compete is being used selectively as a weapon to punish employees that refuse to get with the program.

Possible misrepresentations of Federal violations

In the same FAR DFARS certification report, Ayers asserts the following on behalf of MiMedx:

the award of contracts by any Federal agency;
(B) Have [ ] Have not [X] , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property(if offeror checks "have", the offeror shall also see 52.209-7, if included in this solicitation);
(C) Are [ ] Are not [X] presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision.
(D) Have [ ] Have not [X] , within a three-year period preceding this offer, been notified of any delinquent

Figure 18 Page 5 of FAR DFARS Certification report.<sup>28</sup>

Recall that McCormack directed the inducements in relation to the Department of Justice made by Shire in January 2017.

<sup>25</sup> To replicate our search, please go to [www.sam.gov](http://www.sam.gov), search records, Keyword: MiMedx, click view details, reps & certs, download FAR & DFARS docs -

<sup>26</sup> [https://www.nextscience.com/wp-content/uploads/2015/09/Next\\_Science\\_Wolcott\\_Study\\_Press\\_Release\\_7.12.17.pdf](https://www.nextscience.com/wp-content/uploads/2015/09/Next_Science_Wolcott_Study_Press_Release_7.12.17.pdf)

<sup>27</sup> See footnote 26

<sup>28</sup> From SAM MiMedx FAR DFARS Certification Document

While the settlement is not an admission of guilt, it is worth noting that when an employee is **named** as the director of such a scheme it would be prudent to let the authorities know. The number senior staff previously from Advanced BioHealing now working at MiMedx listed in section 3 lend weight to this claim.

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*Viceroy's consultations with experts in the field were inconclusive as to whether this is in breach of the FAR & DFARS. However, the consensus was: if in doubt to disclose it anyway. One specialist refused to comment as he had serious reservations as to why employees named in Department of Justice documents would be employed.*

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**MiMedx may argue McCormack is not a principal of MiMedx, however FAR & DFARS definitions entirely disagree with any such suggestion.**

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C 362 (the Bankruptcy Code).  
(ii) The Offeror has [ ], has not [X], within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.  
(2) "Principals," for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).  
This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

Figure 19 Definition of principals and senior employees.<sup>29</sup>

This **definition of principals includes McCormack and more than 15 others ex-Advanced BioHealing employees** currently at MiMedx. It is not for us to clarify whether MiMedx should disclose the conduct of its principals and senior personnel. However, due to the recent nature of the Shire settlement and the serious accusations within, we find it hard to believe this was considered fully.

Even more concerning: the person that filed the certification allegedly worked for a competitor for nearly two years and had left the company 3 months before allegedly filing MiMedx FAR/DFAR certification.

**Once more we must bring in to question what the VA will make of this; and we do not believe it will be favorable.** Bear in mind that even a temporary suspension of MiMedx's ability to sell to the VA will have a **material impact on its sales.**

Viceroy's investigation is ongoing

The question Viceroy will be asking SAM.GOV as part of our ongoing investigation into MiMedx's affairs is:

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*Does Sean McCormack's and the numerous other Advanced BioHealing staff's employment by MiMedx constitute a material disclosure in relation to previous conduct in Federal violations and fraud?*

*If Don Ayers was not working at MiMedx, can he sign the FAR and DFAR report?*

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<sup>29</sup> SAM MiMedx Definition of principals March 2017

### 3. Advanced BioHealing Employee headcount

As we have mentioned above, McCormack and Ayers are not the only Advanced BioHealing alumnus at MiMedx. A LinkedIn search returned approximately 54 ex-Advanced BioHealing employees at MiMedx over the last three years – many of which are still employed by MiMedx. 38 of 54 were employed at prior to the filing of the False Claim Act suit by Department of Justice<sup>30</sup>.

As with McCormack and Ayers, many ABH employees have secured senior positions within MiMedx:

Name	MiMedx Position	Advanced Bio-Healing/Shire Position
Sean McCormack	Director of New Market Initiatives	Senior Director of Commercial Development
Lou Roselli	Director of Sales Operations	Senior Account Manager
Kris Nitschelm	Director of Health Policy	Senior Reimbursement Territory Manager
Don Ayers	National Director of Strategic Accounts (Left January 2017)	Western US Sales Director
Tom Dion	Vice President of Sales	Regional Sales Director
Pamela McKeown	Director of Health Policy (Left May 2017)	Reimbursement Manager
Adam Dach	Regional Sales Director Great Plains	Advanced Tissue Specialist, Regional Sales Director
Andrew Sole	Sales Director, Vice President Sales	Executive Account Manager
Bill Ruff	Area Vice President of Sales Southeast	Senior Director of Commercial Operations Greater Chicago Area
Don Ayers	National Director Strategic Accounts (Jan 2017)	Director of National Accounts
Douglas Baddley	Regional Sales Director, Account Executive	Senior Account Manager
Hal Purdy	Senior Account Executive VA Hospitals (Left Jan 2017)	Senior Account Manager
Jeff Turner	Regional Sales Director	Sales Representative
Jess Kruchoski	Regional Sales Director	Advanced Technology Specialist
Joe Panther	Regional Sales Manager DFW	Region Executive Account Manager
Michael Fox	National Vice President Federal and Academic Institutions, Area Vice President, Sales Director	Central Region Sales Director Federal Markets, Director of Customer Relations
Nicholas Andolino	Vice President of Sales, West	Advanced Technology Specialist
Pamela McKeown	Director of Health Policy	Reimbursement Manager, Director Health Policy
Pat Alba	Regional Sales Director	Regional Sales Director
Patrick Humphrey	Account Executive, Regional Sales Director	Advanced Technology Specialist
Amy Powers	Area Federal Director and Regional Sales Director Orthopedics, Spine and Sports Medicine (Left March 2017)	Account Manager

Figure 20 Viceroy Analysis of ex-Advanced BioHealing employees at MiMedx<sup>31</sup>

<sup>30</sup> Viceroy used a cut-off date of January 2011 which was prior to the DOJ filing of 29 Jan 2011.

<sup>31</sup> Obtained from LinkedIn.com profile search

These MiMedx personnel are noticeably absent from the Board of Directors and the Management page of MiMedx's website despite the seniority of the roles listed in below.

Parker H. "Pete" Petit   Chairman of the Board and Chief Executive Officer
William C. Taylor   President and Chief Operating Officer
Michael J. Senken   Chief Financial Officer
Alexandra Haden   General Counsel and Secretary
Christopher M. Cashman   EVP and Chief Commercialization Officer
Deborah Dean   Executive Vice President
Brent Miller   Executive Vice President
Thornton Kuntz   Senior Vice President of Administration
Michael W. Carlton   Senior Vice President of Global Sales
Marlene M. DeSimone   Senior Vice President of Corporate Strategic Development
Donald E. Fetterolf, M.D., FACP   Chief Medical Officer
Thomas J. Koob, PhD   Chief Scientific Officer
Frank Burrows   Vice President Clinical and Scientific Liaison
Rebeccah J. C. Brown, PhD   Vice President of Product Development, Regulatory Affairs, and Quality Assurance
Randall Spencer   Vice President of Clinical Innovation
David H. Mason, Jr., M.D.   Vice President of Medical Affairs for Clinical Practice
Dr. I. Mark Landy   Vice President Strategic Initiatives

Figure 21 Extract of MiMedx's Management page<sup>32</sup>

Is MiMedx breaking bad sales habits? Unlikely

The scheme at Advanced BioHealing was one of kickbacks, bribery, and manipulation of the VA hospital system to boost sales of Dermagraft™. Among the activities listed the bribery and kickback scheme was the invitation of VA doctors to speak at training seminars to better educate Advanced BioHealing sales staff on navigation of the VA system.

10. A "sales training" event was a specific agreement in which a company paid a VA clinician up to \$3,000 to train company sales personnel how to sell to VA facilities. The "sales training" required the VA clinician to travel to company headquarters, or other locations, to deliver a presentation on how to navigate VA facilities, how to avoid impediments to sales, and on how to reach the people who controlled purchasing in VA facilities.

Figure 22 Extract from United States vs Todd Clawson<sup>33</sup>

Many ex-Advanced BioHealing staff would have been at these sessions given their seniority within the sales organization. **We find it unlikely that the practice would have stopped after Advanced-BioHealing given the disproportionate increases in Selling, General and Administrative expenses at MiMedx year-on-year.**

<sup>32</sup> [http://mimedx.com/about-us?qt-management\\_tabs=1#qt-management\\_tabs](http://mimedx.com/about-us?qt-management_tabs=1#qt-management_tabs)

<sup>33</sup> Case 2:16-cr-00075-RSL

MiMedx has previously been the subject of a VA investigation by the Office of the Inspector General of the Department of Health and Human Services when it was issued a subpoena<sup>34</sup>. In his statement, MiMedx CEO Parker “Pete” Petit had this to say about the (at that time, ongoing) Advanced BioHealing investigation:

Petit continued, “We are aware of investigations in the wound care market over the past several years, in particular, the ongoing investigation into the sales and marketing practices of Advanced BioHealing (“ABH”), the original manufacturer of Dermagraft®. We anticipated that the ABH investigation could lead to a review of other industry participants, particularly in view of the fact that several industry participants, including MiMedx and some of our competitors, have hired former ABH employees. We screen all of our applicants very carefully. With respect to former ABH applicants, we sought additional input from some former ABH corporate management who joined MiMedx and who were familiar with the suspected violations and the individuals involved. Approximately 18 months ago, we had confirmation of a violation of our compliance policies, and within 24 hours, that individual was terminated.”

Figure 23 MiMedx Announces Receipt of Civil Subpoena<sup>35</sup>

Viceroy is perplexed by Pete Petit’s logic in in seeking character references of ex-Advanced BioHealing employees from “former ABH corporate management...**who were familiar with the suspected violations and individuals.**”<sup>36</sup>

The sellside is getting warm

During the legal saga against the two employees turned whistleblowers and subsequent actions against two current and one former employees MiMedx CEO Parker “Pete” Petit was questioned regarding connections of the three staff members involved.

**Joe Munda**

As far as the terminated personnel, just taking a quick look on LinkedIn, I mean all four of them seem to be from the Midwestern region. And I was just wondering: A, how much the Midwest was a contributor to overall revenue; and B, I mean, if we could get to more granular level, how much revenue did these four rest contribute to the overall '16 number?

**Pete Petit**

First of all, not a LinkedIn guy, but you're correct. And three of those four individuals had worked together previously and so on. So, there is old friendships there that kind of seem to stimulate this kind of activity, so that's that. I don't know that we -- anybody sitting in this room at the moment...

Figure 24 excerpt of MiMedx Q4 2016 earnings call<sup>37</sup>

We encourage Joe Munda to check more extensively on LinkedIn as our figure currently sits at 54 evidenced as Ex-Advanced BioHealing employees, far above the three involved in the legal claims.

*If MiMedx’s CEO is aware that prior employment can lead to potential future problems, why is so much of MiMedx’s upper management and sales team Advanced BioHealing alumnus?*

<sup>34</sup> <http://www.prnewswire.com/news-releases/mimedx-announces-receipt-of-civil-subpoena-300014927.html>

<sup>35</sup> See footnote 34

<sup>36</sup> See footnote 34

<sup>37</sup> <https://seekingalpha.com/article/4049122-mimedx-groups-mdxg-ceo-pete-petit-q4-2016-results-earnings-call-transcript?part=single>